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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U7083C) and Comtech Telecommunications Corp. and Typhoon Acquisition Corp., a wholly owned Subsidiary of Comtech for Approval of the Transfer of Control of TeleCommunication Systems, Inc.

Application 16-02-011
(Filed February 17, 2016)

**JOINT SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE SETTING SCOPE OF
PHASE TWO PENALTY PROCEEDING**

Summary

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules)¹, this Scoping Memo and Ruling sets forth the procedural schedule and scope of the phase two penalty proceeding, assigns the Presiding Officer, and addresses other procedural matters following the Prehearing Conference held on August 15, 2016.

1. Background

On February 17, 2016, TeleCommunication Systems, Inc. d/b/a Maryland Telecommunications Systems, Inc. (U7083C), Comtech Telecommunications Corp. and Typhoon Acquisition Corp., a wholly owned subsidiary of Comtech Telecommunications Corp. (together, "Applicants"), filed an application for

¹ California Code of Regulations, Title 20, Division 1, Chapter 1; hereinafter, Rule or Rules.

authorization, pursuant to Public Utilities Code Section (Pub. Util. Code §) 854,² to transfer control of TeleCommunication Systems, Inc. (TCS) to Comtech Telecommunications Corp. (Comtech). The application was unopposed and there were no protests.

The Commission, in Decision (D.)16-06-048, granted the application on June 23, 2016. However, the proceeding was left open for consideration of penalties upon learning that the Applicants may have finalized the transfer of control sought in the application prior to Commission-approval.

On July 7, 2016, the Applicants filed notice pursuant to Ordering Paragraph 5 of D.16-06-048, that the purchase transaction was consummated on February 23, 2016.

On July 15, 2016, the assigned Commissioner and the Administrative Law Judge (ALJ) set a Prehearing Conference (PHC) for August 15 and ordered briefing by the Applicants to explain: (1) why the transaction was consummated within a week after the application was filed, and (2) why Applicants should not be subjected to a fine for violation of Section 854. On August 10, 2016, Applicants filed briefing as ordered.

2. Scope

Based on the application, the briefing submitted by Applicants on August 10, 2016 and the discussion during the PHC held August 15, the following issues shall be included within the scope of the penalty proceeding:

- a. Is imposition of a penalty under Section 2107 appropriate under criteria set forth in D.98-12-075?

² All Section references are to the Public Utilities Code, unless otherwise stated.

- b. Are the applicants exempt from penalty if the acquired company (TCS) does not offer regulated services in California, or is harm to the regulatory process to be considered?
- c. Are there any mitigating facts in this case that would warrant consideration of a reduced penalty or no penalty?

3. Categorization and Need for Hearing

In its Resolution ALJ-176-3373, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that no hearings were necessary.

This scoping memorandum concerns the penalty phase only. For purposes of this penalty phase, hearings do not appear necessary, however, should a hearing be needed, it will be held as scheduled below.

4. Proceeding Schedule

As required by Rule 7.3(a), the schedule for this proceeding shall be as follows:

EVENT	DATE
Applicant's Initial Briefing on Scoping Issues	September 23, 2016
Evidentiary Hearing (if required)	October 11, 2016
Post-Hearing Briefing (if hearings held)	November 14, 2016
Proposed Decision	4th Quarter 2016

This schedule may be altered by ruling from the assigned Commissioner or ALJ. The schedule anticipates that this proceeding should conclude no later than 18 months from the date of this scoping memorandum (§ 1701.5). This deadline may be extended by order of the Commission (§ 1701.5(a)).

Although this is a ratesetting proceeding, by Rule 8.3 the ALJ and assigned Commissioner determine that *Ex Parte* communications shall be prohibited during this penalty phase.

5. Assigned Commissioner and Presiding Officer

Liane M. Randolph is the assigned Commissioner and Patricia B. Miles is the assigned Administrative Law Judge in this proceeding. Pursuant to § 1701.3 and Rule 13.2, Patricia B. Miles is designated as the Presiding Officer in this proceeding.

6. Filing, Service and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ.

7. Electronic Submission and Format of Supporting Documents

The Commission's web site now allows electronic submittal of supporting documents (such as testimony and work papers). Documents attached as exhibits to briefing, need not be submitted through the process below.

Parties shall submit their testimony or workpapers in this proceeding through the Commission's electronic filing system.³ Parties must adhere to the following:

³ These instructions are for submitting supporting documents such as testimony and work papers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony.

Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.

- The Instructions for Using the “Supporting Documents” Feature,
(<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546>) and
- The Naming Convention for Electronic Submission of Supporting Documents
(<http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=100902765>).
- The Supporting Document feature does not change or replace the Commission’s Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission’s Rules of Practice and Procedures including but not limited to rules for participating in a formal proceeding, filing and serving formal documents and rules for written and oral communications with Commissioners and advisors (i.e. “ex parte communications”) or other matters related to a proceeding.
- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony, work papers and workshop reports (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the Commission.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (i.e. “record”) unless accepted into the record by the Administrative Law Judge.

All documents submitted through the “Supporting Documents” Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security – PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention – The Commission is required by Resolution L-204, dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.
- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Until further notice, the “Supporting Documents” do not appear on the “Docket Card”. In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: “E-filed Documents ”,
- Select “Supporting Document” as the document type, (do not choose testimony)
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams (kale.williams@cpuc.ca.gov)
415-703- 3251 and
- Ryan Cayabyab (ryan.cayabyab@cpuc.ca.gov)
415-703-5999

IT IS RULED that:

1. The category of this proceeding is ratesetting. Appeals as to category, if any, must be filed and served within ten days from the date of this scoping memo.

2. Administrative Law Judge Patricia B. Miles is designated as the Presiding Officer.

3. The scope of the issues for this proceeding is set forth in Section 2 of this ruling.

4. An evidentiary hearing may be necessary.

5. The schedule for the proceeding is set forth in Section 4 of this ruling. The assigned Commissioner or Presiding Officer may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.

6. *Ex parte* communications are prohibited in this proceeding.

7. Parties shall adhere to the instructions provided in Section 7 regarding filing and service of documents, and in Section 8 of this ruling for submitting supporting documents, including testimony.

Dated September 1, 2016, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

/s/ PATRICIA B. MILES

Patricia B. Miles
Administrative Law Judge